

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHERYL BONENBERGER	:	CIVIL ACTION
	:	
v.	:	
	:	
PLYMOUTH TOWNSHIP, et al.	:	NO. 96-403

MEMORANDUM OF DECISION

THOMAS J. RUETER
United States Magistrate Judge

June , 1998

Presently before the court is the motion for judgment as a matter of law, or in the alternative to alter or amend judgment, of defendant Plymouth Township (hereinafter "Township"). For the reasons explained below, the court will grant the motion.

I. **BACKGROUND**

Plaintiff, Cheryl Bonenberger, filed this action against Plymouth Township claiming that she was sexually harassed by defendant Sergeant Joseph LaPenta, an employee of the Township's police department. Specifically, plaintiff alleged that the Township failed to take adequate remedial steps to eliminate the harassment after it became aware of plaintiff's complaint. See Knabe v. Boury Corp., 114 F.3d 407 (3d Cir. 1997). After a trial, a jury awarded plaintiff \$20,000 in compensatory damages and \$50,000 in punitive damages against the Township. Punitive damages were awarded pursuant to the plaintiff's claim that the Township violated the Pennsylvania Human Relations Act , 43 Pa. Cons. Stat. Ann. § 951, et. seq. (West. Supp. 1998) (hereinafter "PHRA" or "Act").

In its motion, the Township argues that the punitive damage award should be

vacated on three grounds: (1) punitive damages are not recoverable under the PHRA; (2) punitive damages may not be awarded against a municipal corporation such as the Township; and (3) the Township's conduct was not sufficiently egregious to warrant the imposition of punitive damages. Because the court finds that the PHRA does not authorize the imposition of punitive damages against the Township because it is a public entity, the court will grant the Township's motion. Therefore the court need not reach the other two arguments raised in the motion.

II. DISCUSSION

The general rule today is that no punitive damages may be awarded against a municipality unless expressly authorized by statute. See City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 259 (1981); 18 Eugene McQuillin, *The Law of Municipal Corporations* § 53.18.10, at 247 (3d ed. 1993). Pennsylvania has consistently followed this majority rule. See Feingold v. Southeastern Pa. Transp. Auth., 512 Pa. 567, 517 A.2d 1270 (Pa. 1986); Order of Hermits of St. Augustine's v. County of Philadelphia, 4 Clark 120 (1847); Note, Punitive Damage Liability of Municipal Corporations in Pennsylvania, 84 Dick. L. Rev. 267 (1980).

The courts have identified three reasons for prohibiting punitive damages against a municipal corporation. First, an award of punitive damages against a municipality would violate the basic punitive purpose behind the award. A municipal corporation is composed of innocent, tax-paying citizens. These citizens are the same people who are supposed to benefit from the public example set by punishing the wrongdoer. It would be anomalous to impose punitive damages on a municipality since the public sought to be protected by deterring the wrongdoer is punished, though innocent of wrongdoing. See City of Newport, 453 U.S. at 263;

Feingold, 512 Pa. at 579-80, 517 A.2d at 1276.

Second, a punitive damage award against a municipality will not necessarily deter other employees because even though a municipality may seek indemnity against the wrongdoing employee, the employee generally will not be able to pay a large punitive damage award that is based upon the wealth of the municipality. See City of Newport, 453 U.S. at 268-69. Municipal employees might not exercise care when they know that the costs of their negligence will be paid by their employer rather than from their own financial resources. See Reiser v. District of Columbia, 563 F.2d 462, 481 (D.C. Cir. 1977). Furthermore, a punitive damage award against a municipality is not justified merely because of its possible deterrent effect on other municipal corporations. See Williams v. City of New York, 508 F.2d 356, 361 (2d Cir. 1974) (court refused to engage in speculation that a punitive damage award against the City would be justified, in whole or part, for its deterrent effect on other cities).

Last, permitting an award of punitive damages against a municipality would also allow the plaintiff to introduce evidence of the municipality's unlimited taxing power since evidence of the wealth of a tortfeasor is admissible to aid the jury in determining the amount of punitive damages. Consequently, a jury would have difficulty estimating the amount of punitive damages that would adequately punish and deter a governmental unit. Moreover, evidence of the unlimited taxing power of a municipality may have a prejudicial effect upon a jury, encouraging it to impose a sizeable award. See City of Newport, 453 U.S. at 270-71.

Consistent with the public policy disfavoring the award of punitive damages against public entities, the overwhelming majority of courts will not construe a statute to authorize such an award unless the statute expressly provides for these damages. See e.g., City

of Newport, 453 U.S. at 271 (punitive damages are not recoverable against a municipality under 42 U.S.C. § 1983); Graff v. Motta, 695 A.2d 486, 489 (R.I. 1997) (punitive damages not permitted under statute which provided that "the State of Rhode Island and any political subdivision could be held liable in all actions of tort in the same manner as a private individual or corporation."); Drain v. Kosydar, 54 Ohio St. 2d 49, 56, 374 N.E.2d 1253, 1257 (1978) (statute providing that "the state hereby waives . . . its immunity from liability and consents to be sued, and have its liability determined . . . in accordance with the same rules of law applicable to suits between private parties . . ." does not authorize award of punitive damages); Nephew v. State, 178 Misc. 824, 826, 36 N.Y.S.2d 541, 543 (Ct. Cl. 1942) (N.Y. Ct. Cl. Act § 8 providing that "the state hereby waives its immunity from liability . . . and consents to have the same determined in accordance with the same rules of law as applied to actions in the supreme court against individuals or corporations . . ." does not permit award of punitive damages).

The PHRA applies to public employers including political subdivisions such as Plymouth Township. See 43 Pa. Cons. Stat. Ann. § 954(b) (West Supp. 1998). However, the Act does not specifically provide that a plaintiff may recover punitive damages. Recently, the Superior Court of Pennsylvania held that the Act does not authorize the imposition of punitive damages against any employer, public or private. Hoy v. Angelone, 456 Pa. Super. 596, 612, 691 A.2d 476, 483 (1997), allocatur granted, 700 A.2d 441 (Pa. 1997) (Table). However, several federal district courts in Pennsylvania have disagreed with this decision. See e.g., McLaughlin v. Rose Tree Media School District, 1998 WL 196394 at *7 (E.D.Pa. Apr. 22, 1998). The Third Circuit has declined to decide this issue pending the Pennsylvania Supreme Court's ruling in Hoy. See Rush v. Scott Specialty Gases, Inc., 113 F.3d 476, 486 (3d Cir. 1997). This court need

not decide the correctness of the Hoy decision. However, the fact that PHRA does not explicitly permit punitive damages against a public entity, as well as Pennsylvania's long-standing public policy against such an award, compels the conclusion that punitive damages are not recoverable against Plymouth Township. Furthermore, at least two judges of this court have held that punitive damages are not recoverable against a public entity under the PHRA. See Curran v. Philadelphia Housing Auth., 1997 WL 587371 (E.D.Pa. Sept. 5, 1997) (Robreno, J.); Moore v. Southeastern Pa. Trans. Auth., 1997 WL 560605 (E.D.Pa. Aug. 29, 1997) (Weiner, J.).¹

In support of plaintiff's argument that punitive damages are recoverable against a municipality under the PHRA, she cites Gares v. Willingboro Township, 90 F.3d 720 (3d Cir. 1996). In Gares, the Third Circuit predicted that the New Jersey Supreme Court would permit the imposition of punitive damages against a public entity pursuant to New Jersey's Law Against Discrimination ("LAD"). However, in predicting New Jersey law, the court had the benefit of

¹ Three other judges of our court have denied requests to dismiss punitive damage claims under the PHRA against municipalities, but those cases do not lend much support to plaintiff's argument. In Carter-Herman v. City of Philadelphia, 1995 WL 764574 (E.D.Pa. Dec. 21, 1995), the court denied a motion by the City to dismiss the plaintiff's claims for punitive damages. The court later made it clear that by denying the motion, it was not conclusively deciding the punitive damage issue, but merely doing so out of an "abundance of caution." See Carter-Herman v. City of Philadelphia, 1996 WL 745227 at *6 (E.D.Pa. Dec. 23, 1996). Because the jury did not find punitive damages against the City, the court did not have to finally decide the issue. Id. Likewise, in Bellack v. County of Montgomery, 1997 WL 688821 (E.D.Pa. Oct. 8, 1997), the court denied a motion to dismiss the plaintiff's punitive damage claim, but expressly reserved ruling on the issue until a later time in the proceeding when it hoped the Pennsylvania courts would have decided the issue. Bellack, supra at *1. Finally, in Watson v. Southeastern Pa. Transp. Auth., 1997 WL 560181 (E.D.Pa. Aug. 28, 1997) the court denied a motion for summary judgment on the issue of punitive damages. To support its decision, the court cited Carter-Herman and Clark v. Pennsylvania, 885 F. Supp. 694 (E.D.Pa. 1995). As explained earlier, Carter-Herman is not persuasive authority to support an award of punitive damages against a municipal corporation. In Clark, the court granted summary judgment on plaintiff's PHRA claims and therefore did not decide whether punitive damages were recoverable under the PHRA. 885 F. Supp. at 715.

two developments that are not present in the case at bar. First, the LAD, as amended in 1990, specifically provided for punitive damages as a remedy. N.J. Stat. Ann. § 10:5-3 (West Supp. 1998). In contrast, the PHRA does not explicitly provide for punitive damages. Secondly, the Third Circuit relied on a New Jersey Supreme Court decision, Abbamont v. Piscataway Twp. Bd. of Educ., 138 N.J. 405, 650 A.2d 958 (1994), in which the court let stand a New Jersey Superior Court ruling that punitive damages are available against public entities under the state's Conscientious Employee Protection Act ("CEPA"), a statute that the state supreme court held is analogous in relevant language, purpose and legislative history to the LAD. In comparison, the Superior Court of Pennsylvania in Hoy specifically held that punitive damages are not recoverable under the PHRA against any employer. Indeed, no reported decision of an appellate court in Pennsylvania has ever permitted punitive damages against a government agency. See generally, Feingold v. Southeastern Pa. Trans. Auth., 339 Pa. Super. 15, 27-30, 488 A.2d 284, 291-92 (1985), aff'd, 512 Pa. 567, 517 A.2d 1270 (Pa. 1986); Note, 84 Dick. L. Rev. at 285-295 (surveying Pennsylvania decisions).

Plaintiff further argues that because the PHRA prohibits acts of discrimination which are especially abhorred by our society, this court should infer that the Pennsylvania legislature intended to permit punitive damages against a public employer who is liable for discrimination. This court rejects this argument for two reasons. First, it is true that discrimination in all forms is an evil that should be punished and deterred. However, there are other tortious acts committed by public employees, such as an assault and battery, for which Pennsylvania law does not permit the imposition of punitive damages against the public employer. The court fails to see why the Pennsylvania Supreme Court would treat acts of

discrimination differently than these other misdeeds. Secondly, courts in other jurisdictions have not made this distinction and refuse to permit an award of punitive damages against public employers in discrimination cases when the applicable statute does not explicitly provide for such an award. See e.g., Johnson v. Alaska State Department of Fish and Game, 836 P.2d 896, 906 (Alaska 1991).²

III. CONCLUSION

For all the above reasons, the court concludes that punitive damages are not recoverable under the PHRA against Plymouth Township. Therefore, the Township's motion for judgment as a matter of law, or in the alternative to alter or amend judgment, is GRANTED and the punitive damage award against Plymouth Township is VACATED. An amended Judgment Order against Plymouth Township is attached hereto.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge

² The court further notes that under Title VII, 42 U.S.C. § 1981a(a)(1) and (b)(1) (West 1994), punitive damages are explicitly prohibited against a municipality. This fact further supports the conclusion that punitive damages are not available against a municipal corporation under the PHRA since the state act generally is applied in accordance with Title VII. See Dici v. Pennsylvania, 91 F.3d 542, 552 (3d Cir. 1996).